IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 217 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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MISS VAISHALI P PUROHIT

Versus

STATE OF GUJARAT

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Appearance:

1. Criminal Revision Application No. 217 of 2004

MS BHAVIKA H KOTECHA for Petitioner No. 1

MR HM PRACHCHHAK ADDL PP for Respondent No. 1

NOTICE UNSERVED for Respondent No. 2

NOTICE SERVED for Respondent No. 3

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CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI

Date of decision: 24/06/2004

ORAL JUDGEMENT

The petitioner practising advocate and working as Addl. P.P. in the district of Junagadh at Veraval has filed this revision application and challenged the order passed by the learned Presiding Judge dated 22nd March, 2004 on an application submitted by her dated 22nd March, 2004 in ASC No. 201 of 1999 pending before the learned Presiding Judge, Fast Track Court, Veraval, in which, the learned APP has requested for adjournment on the ground that case which was fixed before the court, in which she has not received the documents referred to in the list from the police and accordingly, she has prayed for time and considering the said application, learned Presiding Judge has passed an order imposing cost of Rs.500-00 to be borne out by the petitioner - learned APP to be paid to the Taluka Legal Aid Committee, Veraval by granting 2 days time.

2. I have heard Ms. Bhavika Kotecha, learned advocate for the petitioner and Mr. H.M. Prachchhak, learned Addl.P.P. for the respondent State. While filing this revision application, the petitioner has joined original accused to the said case as respondent Nos. 2 and 3 in this petition, who are the accused in Atrocity Case No. 201 of 1999, who had objected the application for adjournment submitted by the learned APP. The notice to said respondents were ordered to be served through concerned court as the matter was before the court on 9.4.2004 and the said accused were supposed to appear before the court. Notice issued to respondent No. 3 is duly served and notice regarding respondent No. 2, as per the Registry is returned unserved. I have perused the letter of the learned In-charge Sessions Judge, Junagadh dated 16.4.2004 regarding service of notice to the opponents and the learned Sessions Judge under his letter forwarded report submitted by the Police Inspector, Una Police Station, in respect of effecting service on the respondents. On perusing the report, the residential premises of respondent No. 2 was found to be closed and on making inquiry, he was contacted on his mobile and the said respondent Manubhai was contacted on his mobile Number 9825136412 and it is found that, at that time, he was at Surat and he was informed that in view of the order passed by the High Court, he has to remain present before the High Court on the returnable date i.e. on 16.4.2004. Accordingly, considering this report and as respondent No. 3 is duly served, I have proceeded with the hearing of the revision application, considering the fact that respondent No. 2 Manubhai was duly informed on his mobile about the order passed by the Court, for which, the court has fixed the hearing of the revision application on 16.4.2004. No appearance is made

on behalf of respondent Nos. 2 and 3.

3. On going through the order under challenge, the learned Presiding Judge has on the application being submitted by the learned Addl.P.P. for seeking adjournment has imposed cost of Rs.500-00 to be borne out by her by making payment to the Taluka Legal Aid Committee, Veraval by granting 2 days time and directed for production of such documentary evidence, failing which, the application for discharge submitted by the accused was placed for order on 9.4.2004. While passing such order, learned Judge has observed that no ground is shown by the learned APP for nonproduction of the police papers. Earlier the application for adjournments were granted on 5.1.2004, 22.1.2004, 9.2.2004 and 18th March, 2004 and the present application is filed without assigning any reason. The court has also observed about his personal experience that such application is being submitted for not proceeding with the case. The accused by separately is permitted to file application for discharge. The case against accused is under Atrocity Act etc. and because of the fault of the learned APP, a cost of Rs.500-00 is imposed on the learned APP, which she has to pay to the Taluka Legal Aid Committee, Veraval personally.

4. In light of the contentions raised before me and on examining the order under challenge passed on an application for adjournment sought for by the petitioner learned APP, it is true that earlier adjournments were entertained and granted between the month of January to March, 2004. It is equally true that case is old one i.e. of the year 1999 and as found from the record, on behalf of the accused, an application for seeking discharge is also presented before the Court on the very day i.e. on 22nd March, 2004 and the learned Presiding Judge has passed order to the effect that in view of the order passed on an application filed by the learned APP, the application was kept for hearing on 9.4.2004. The application submitted by the learned APP cannot be said that she has not assigned any reasons as according to her, she has not received the police papers from the Investigating Agency and it is reflected in the list of documents. If these papers are available with her, then, she is not required to pray for adjournment by filing an application for adjournment and she cannot be held responsible in respect of the inaction by the police authority (Investigating Agency). There is no reason for imposing personal cost of Rs.500-00 on the learned APP, who is in charge of the said case. It is equally possible for the learned Presiding Officer to give

direction to the police authority for not cooperating with the learned APP by not deputing the Investigating Officer with the documents and further that the court ought to have sought for explanation from the Investigating Agency. According to me, imposition of cost on learned APP is not proper and accordingly, I have no alternative but to set aside the said order. The order passed by the learned Presiding Judge on an application for adjournment for imposing personal cost on the petitioner is hereby set aside. Accordingly, the revision application is allowed. Rule is made absolute in above terms.

(D.K.Trivedi, J.)

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